THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 27397 OF 2006

BETWEEN:

PASAGADUGULA VEERAIAH S/O VENKANNA

------ PETITIONER

AND

THE DISTRICT COLLECTOR, EAST GODAVARI DISTRICT,KAKINADA AND FOUR OTHERS.

----- RESPONDENTS

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 27397 OF 2006

ORAL ORDER:

Heard Sri P. Durga Prasad, the learned counsel representing the petitioner and the learned Assistant Government Pleader for Civil Supplies representing the respondents.

2. The petitioner filed the present Writ Petition praying for a Writ of Mandamus or any other appropriate writ, order or direction declaring the proceedings of the first respondent in D.Dis No. V3/CS/450/2002 dated 19.3.2003 confirming the order passed by the 2nd respondent herein in proceedings D.Dis No. V3/CS/340/2002 dated 29.7.2002, confirming the order passed by the 3rd respondent herein in Ref. C.No. 463/2002 dated 25.4.2002 as illegal, arbitrary, unreasonable, void and violative of Articles 14, 21 and 19(1)(g) of the Constitution of India and consequently direct the respondent herein to restore the authorization of Fair Price Shop No. 31 situated at Mulagapudi Village, Kotananduru Mandal, East Godavari District to the petitioner herein and pass such other order or orders.

3. Sri P.Durga Prasad, the learned counsel representing the Writ Petitioner had taken this court through the contents of the order made by the third respondent, the Revenue Divisional Officer –cum- Deputy Tahsildar, Civil Supplies, Peddapuram dated 25.4.2002 and also the order made by the second respondent, the Joint Collector and Additional District Magistrate, East Godavari District, Kakinada dated 29.7.2002 and also the

order made by the first respondent dated 19.3.2003, confirming the said orders and would maintain that the reasons recorded by these quasi judicial authorities in the hierarchy are totally unsustainable reasons especially in the light of the findings recorded by the Principle Sessions Judge, East Godavari in Criminal Appeal No. 141 of 2002. The learned counsel also would maintain that the learned Principal Sessions Judge observed that except contravention No. 5, noted by the prosecution, the petitioner is not guilty of any of contravention numbers 1 to 4 mentioned in page 3 of the order of the Joint Collector. The learned counsel also pointed out that the appeal was partly allowed directing the percentage of confiscation of the seized stocks from 100% to 25% though it cannot be said to be a clear acquittal and the observations made and the modification made by the Principle Sessions Judge, East Godavri would definitely go to show that the reasons recorded by the Joint Collector are unsustainable reasons, and when that being so, the reasons recorded by the quasi judicial authority, the District Collector confirming the same also to be taken as unsustainable. Hence, the orders impugned in the present Writ Petition are to be quashed and the restoration of authorization to the writ petitioner to be directed in the facts and circumstances of the case.

4. Per contra, the learned Assistant Government Pleader for Civil Supplies had taken this Court through the contents of the counter affidavit filed by the respondents and would maintain that though an interim order had

been granted nothing further in pursuance thereof had been dealt with for the reason that W.V.M.P.No. 667 of 2007 was moved immediately. The learned Assistant Government Pleader for Civil Supplies also would maintain that the quasi judicial authorities in the hierarchy by dealing with the proceedings relating to cancellation of authorization would stand on a different footing and these authorities are not bound by observations made, if any, in the proceeding concern with Section 6-A of the Essential Commodities Act, 1955. The learned Assistant Government Pleader for Civil Supplies also would contend that even otherwise it is not a case of clear acquittal recorded in the criminal appeal and hence it cannot be said that when at least one of the charges had been confirmed even by the competent criminal court that would be sufficient to sustain the order of cancellation especially in the light of the reasons recorded by the primary authority, appellate authority and also the revisional authority as well. While further elaborating her submissions, the learned Assistant Government Pleader for Civil Supplies had pointed out to Form-II, Condition Nos. 11 and 13 and Condition No. 4 annexed to A.P.D.S. Control Order 2001 (hereinafter referred to as “an order” for the purpose of convenience) and also further relied upon Clause 2(6) and Clause 22(vii) of the said order and would maintain in the light of the same, since it cannot be said that the observations made in the Criminal Appeal to be binding on these authorities and in view of the fact that these authorities had recorded independent findings

concurrently at all stages, this Court not to exercise jurisdiction under Article 226 of the Constitution of India.

5. Heard the counsel and perused the records.

6. This court issued Rule Nisi on 2.1.2007 and in WPMP No. 35177 of 2006 this court made the following order:

> "The petitioner is directed to file an application as required under Proviso to Clause 5(4) of the Andhra Pradesh State Public Distribution System Control Order, 2001 before the third respondent-RDO. On filing such application, the third respondent shall consider the same and pass orders within a period of four weeks from the date of receiving such application from the petitioner."

7. As can be seen from the respective stands taken by the parties in the affidavit filed in support of the Writ Petition and also the counter affidavit, several of the facts are not in serious controversy. It is averred in paragraph 3 of the affidavit filed in support of the Writ Petition that the petitioner is the dealer of Fair Price Shop at Mulagapudi Village , Kotananduru Mandal, East Godavari District. It is stated that the petitioner herein was appointed as a dealer of Fair Price Shop 20 years back and ever since the date of his initial appointment as Fair Price Shop Dealer, the petitioner herein lifting the stock in time and supplying the stock to the card holders in time and absolutely there are no complaints from any quarter particularly from the card holders at any point of time against the petitioner herein regarding non-availability of the Commodities or

distribution. The petitioner has been discharging functions entrusted to the petitioner by the Government in an effective and systematic manner and up to the entire satisfaction of the card holders.

8. Further it is stated that while the matters stood thus to the utter surprise and dismay, the respondent authorities conducted surprise visit and checked the stocks pertaining to the petitioner's fair price shop on 27.1.2002 and found some alleged irregularities and a show cause notice was issued by the 2nd respondent herein on 7.2.2002 under Section 6-B of the Essential Commodities Act, calling for explanation with regard to the alleged irregularities committed by the petitioner herein. The petitioner herein filed a detailed explanation. It is humbly submitted that without considering the explanation submitted by the petitioner herein the 2nd respondent passed an order of confiscation and imposed a fine for equivalent value of 7 quintals of Food for Work, rice stock under Section 6-A of the Essential Commodities Act, 1958 by proceedings reference V3/CS/55/2002 dated 3.5.2002. It is stated that aggrieved by the said order passed by the second respondent herein the petitioner herein filed an appeal on the file of the Court of the District and Sessions Judge, East Godavari District, being Criminal Appeal No. 141 of 2002 and also stay of the impugned orders passed by the 2nd respondent herein. It is submitted that the District Court was pleased to grant interim stay initially by an order dated 18.6.2002 in

Criminal M.P.No. 645 of 2002 in Criminal Appeal No. 141 of 2002 and on hearing finally the Court of the Principal Sessions Judge, East Godavari District was pleased to allow the Appeal filed by the petitioner by an order dated 3.2.2006 not finding guilty of the charges levelled against the petitioner herein.

9. Further it is averred that while the matter is pending simultaneously the respondent authorities initiated proceedings against the petitioner herein under the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Act, 1973 on the same ground as mentioned in the 6-A proceedings directing the petitioner herein to show cause to give an explanation by reference C.No. 306/2002 dated 25.4.2002 by the 3rd respondent herein. It is submitted that the petitioner herein submitted a detailed explanation and without considering the explanation given by the petitioner herein by proceedings Ref.C/463/2002 dated 25.4.2002 the third respondent herein had cancelled the authorization of the petitioner's dealership of fair price shop.

10. Further it is averred that aggrieved by the said order passed by the third respondent herein dated 25.4.2002 the petitioner filed an appeal before the Joint Collector, East Godavari District, Kakinada and the same was dismissed by proceedings D.Dis.V3/CS/340/2002 dated 29.7.2002. Aggrieved by the said orders passed by the 2nd respondent dated 29.7.2002 the petitioner herein filed a revision before the Collector, East Godavari District

and the same was dismissed by an order dated 19.3.2002 in D.Dis No. V3/CS/450/2002. Further it is averred that while things being so proceedings initiated against the petitioner herein under the Essential Commodities Act and A.P. Scheduled Commodities Act and A.P. Scheduled Commodities (Regulation of Distribution of Card System) Order, 1973, virtually being one and the same, the Criminal Appeal filed by the petitioner as against the proceedings under Section 6-A of the Essential Commodities Act has ended in acquittal. These simultaneous proceedings relating to cancellation cannot be sustained in the eye of law and prays the revision petitioner is bound to succeed. Several other further averments also been made in the affidavit filed in support of the Writ Petition.

11. In the counter affidavit filed, it is averred in paragraph 2, basing on the report of the C.S.D.T, Tuni and after thorough examination of the explanation offered by the petitioner, keeping in view the irregularities committed by him orders were passed cancelling the authorization on the appeal filed before the Joint Collector against the said orders. The Joint Collector, after perusing the records has confirmed the order passed by the 3rd respondent. Again, the petitioner has filed a revision petition before the District Collector against the orders of the Joint Collector and the District Collector after examining the reports, held that the lower authorities had held that the irregularities committed by the Revision Petitioner herein in running the Fair Price Shop at Mulagapudi Village were serious enough and

hence appointing authority cancelled authorization held by the revision petitioner. The Revisional authority also held that the lower authorities had considered all aspects and gave a speaking order for the irregularities committed by the revision petitioner and the orders passed by them are just and proper.

12. It is also further averred that it is not correct to say that the dealer is supplying the stock to the cardholders in time and absolutely there are no complaints from any quarter particularly from the cardholders. It is submitted that on receipt of credible information, the C.S.D.T, Tuni and Prathipadu have inspected the F.P Shop maintained by Sri P. Veeraiah of Mulagapudi Village and noticed certain irregularities committed by the dealer and filed a case under Section 6 A of the E.C. Act. If the petitioner had happened to supply the commodities to the cardholders properly as contended, there would not be any scope for variation in the stocks of commodities, which were noticed during inspection. It is therefore, submitted that the contention of the petitioner in this regard are untenable.

13. Further the averments in the paragraph four is also been denied. It is averred that after perusal of the inspection report filed by the CSDT, Tuni, an opportunity was given to the petitioner by issuing a show cause notice to offer his explanation and on perusal of the explanation and other material papers the above order was passed by the second respondent. It is further stated that it is true a

Criminal Appeal No. 141 of 2002 has been filed in the court of District and Sessions Judge, Rajahmundry by the petitioner and obtained stay on the orders passed by the Joint Collector in the Ref. V3/CS/55/2002. As the matter stood thus, he again filed a revision petition before the District Collector, against the orders of Joint Collector without waiting for the outcome of the judgment in Criminal Appeal No. 141 of 2002.

14. It is also stated that it is not correct to say that without considering the explanation offered by the petitioner for the Show Cause Notice issued by the third respondent, the authorization was cancelled. After issuance of show cause notice and on perusal of the explanation, the authorization of the petitioner was cancelled in view of the gravity of irregularities committed by him in maintaining the F.P. Shop.

15. The petitioner has committed the following charges.

(1) The petitioner has misused a quantity of 8.60 qtls of PDS Rice intended for distribution to the card holders. It is clear from the inspection report submitted by the C.S.D.T., Tuni on 27.1.2007.

(2) At the time of inspection by the CSDT, Tuni there is a shortage of 1.20 qtls of Sugar and thereby the petitioner misused the above quantity.

(3) The petitioner has shown the Kerosene balance as NIL, but as per the records there should be a balance of 141 Ltrs

Kerosene. Therefore the petitioner misused a quantity of 141 Ltrs Kerosene for distribution to the card holders.

16. Further in paras 6 and 7 of the counter affidavit , the appeal preferred before the Joint Collector and the revision preferred before the District Collector and the orders made there on had been referred. Specific stand had been taken that it is not correct to say that the Criminal Appeal filed by the petitioner against Section 6-A of the proceedings of the Essential Commodities Act, 1955 had ended in acquittal. The learned District and Sessions Judge, Rajahmundry partly allowed the appeal and ordered for confiscation of the seized stock from 100% to 25% and thus the court only reduced the percentage of the confiscation but not acquitted the petitioner as contended by him. More over, the reduction in percentage of confiscation does not confer any right on the appellant to seek for restoration of the authorization.

17. As already referred to supra, the counsel on record would made elaborate submissions in relations to the nature of the orders made on the strength of the charges and also the findings which had been recorded in the criminal appeal by the District and Sessions Judge, Rajahmundry. Incidentally, submissions at length were made in relation to Clause 2(6) and Clause 22(vii) of the order and also condition No. 4 and Form-II, Conditions 11 and 13 are all annexed to the said order.

18. On a careful reading of the stocks referred to supra, there cannot be any doubt whatsoever that the

proceedings under Section 6-A of the Essential Commodities Act, 1955 stand on a different footing taken when compared to the proceedings relating to the suspension or cancellation of the authorization under the Order referred to supra. However, it is pertinent to note that when the charges framed and the findings recorded by a competent criminal court also cannot be totally ignored while considering the provisions relating to the cancellation of the authorization.

19. Be that as it may, it may be appropriate to have a glance at the charges leveled against the Writ Petitioner in the order made by the third respondent Ref. © 463/2002 dated 25.4.2002, the report of the Mandal Supply Officer, Tuni dated 29.1.2002, further reference dated 6.2.2002 and dated 2.4.2002 and the explanation of Sri P. Veeraiah, Mulagapudi Fair Price Shop Dealer, the Writ Petitioner had been referred to. The charges and the explanations also had been referred to and it was recorded that the explanation offered being not satisfactory, the authorization had been cancelled. The said charges are extracted hereunder:

> "Charge-1: That there should be reserve of Quintals 9.10 kilograms of rice as on 27.1.2002, but there is only 0.50 k.gms of ground balance as such misappropriated quintals 8.60 k.gms.
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> Charge-2: That there should be reserve of Quintals 1.41 kilograms of sugar as on 27.1.2002, but there is only 1.20 k.gms on ground balance as such misappropriated 0.21

k.gms.

Charge -3: That there should be reserve of 141 litres of kerosene as on 27.1.2002, but there is no ground balance as such misappropriated 141 litres of kerosene."

20. The second respondent in the order dated 29.7.2002 in proceedings D.Dis. V3/340/2002, after referring to the brief facts and also the grounds of appeal observed as under:

"The show cause notice was issued by the Revenue Divisional Officer, Peddapuram was examined. The Revenue Divisional Officer, Peddapuram has issued a show cause notice on 2.4.2002 with a direction to attend before the Revenue Divisional Officer on 20.4.2002 at 12.00 Noon and to file explanation before the court. The show cause notice was also served to the petitioner. After receiving the show cause notice the petitioner Sri. Pasagodugula Veeraiah has attended before the Revenue Divisional Officer, Peddapuram on 20.4.2002 and filed his written explanation stating that due to his illness and light Paralysis stroke to his hands consequently, the entries could not be made and though the stocks were issued and coupons were received. Before issuing cancellation orders of authorization, the R.D.O., Peddapuram has discussed the issue in detail in Ref.C/463/2002, dated 25.4.2002.

The petitioner has misused 8.60 Qtls of P.D.S Rice, 0.21 Qtls of Sugar 141 Ltrs of K.Oil for his illegal benefits. The dealer has also failed to maintain true and correct

accounts.

I opined that the Revenue Divisional Officer, Peddapuram who is a appointing authority of the dealer has taken proper action against the said order. In the above circumstances, I do not see any reason to interfere the impugned order. Therefore, the action taken by the Respondent 1 is up-hold. Accordingly, the appeal is not allowed."

21. The first respondent in D.Dis.V3/CS/450/2002 dated 19.3.2003, as revisional authority after referring to the grounds while dismissing the revision observed as under:

"Heard the arguments and perused the records.

Lower court examined carefully and the revision petition averments are examined thoroughly. Lower court felt that irregularities committed by revision petitioner herein in running the Fair Price Shop at Mulagapudi Vilalge were serious enough and hence appointing authority cancelled authorization held by revision petitioner herein. I also examined the lower court judgment whether there was application of fact and speaking order. I feel lower court considered all aspects and gave a speaking order. For the irregularities committed by Revision Petitioner, I feel the orders passed earlier are just and proper.

Revision Petition fails accordingly."

22. On a careful analysis of the observations made by the primary authority, appellate authority and the revisional authority on the ground that the charges leveled

against and irregularities committed being serious, it is a fit matter where cancellation to be ordered. The show cause notice issued under Section 6-B of the Essential Commodities Act, 1955, the explanation submitted and the order made by the Joint Collector dated 3.5.2002 in reference V3/CS/55/2002 also had been placed before this Court in Criminal Appeal No. 141 of 2002 on the file of Principal Sessions Judge, East Godavari District, preferred as against the order dated 3.5.2002 made by the Joint Collector, East Godavari District, Kakinada, in V3/CS/55/2002, wherein confiscation of 100% of the seized stocks had been ordered under Section 6-A of the Essential Commodities Act, 1955. It was observed at paragraphs 4 and 5 as here under:

> " There is no dispute about inspection of the appellant's shop on 27.1.2002 at 12.10 PM by the officers in the presence of mediators and finding deficits in stocks as noted in the mediators' report. Admittedly, the appellant was not writing registers and records promptly. According to the appellant, he was not able to write accounts and registers daily because of illness. When compared to the ground stocks with book balance, initially huge variations were found to the extent of deficit of 29.75 quintals of PDS rice. O.55 quintals of sugar, 600 liters of kerosene oil and 202.70 quintals of FFW rice. But, when all the coupons were gathered and which coupons were not shown in the sales register, the final variation was found to be deficit of 8.60 quintals of PDS rice, 0.21 quintals of sugar, 141 liters of kerosene oil; and no variation was found with regard to FFW rice. Along with the

explanation, the appellant filed medical certificate issued by Suresh Orthopedic Hospital , and x-ray film. Along with the explanation, the appellant filed coupons of rice, sugar and kerosene oil which are stated to have been keep it in cash box and which were not taken into account at the time of checking of the stocks. If the said coupons are taken into consideration, then virtually there is no variation in stocks of PDS rice, sugar and kerosene oil. When there is no variation practically in either PDS commodities or FFW rice, the order passed by the Joint Collector confiscating 100% of the seized stocks is not justified. As the matter now stands, the appellant is guilty of improper maintenance of registers and non-completion of accounts on the same day. Except contravention No. 5 noted by the prosecution, the petitioner is not guilty of any of contravention Nos. 1 to 4 mentioned in page 3 o the order of the Joint Collector. I am of the opinion that for the said technical contravention of not maintaining registers and accounts properly ends of justice will be met if 25% of the seized stock is confiscated instead of 100%.

In the result, the appeal is partly allowed modifying percentage of confiscation of the seized stocks from 100% to 25%."

23. As can be seen from the order made by the primary authority, the Revenue Divisional Officer concerned while ordering cancellation only three charges had been referred to. It is pertinent to note that in the Criminal Appeal referred to supra, specifically it was observed that the appellant was guilty for improperly maintaining the

registers and non-completion of accounts on the same day. Further it was observed that except contravention No. 5 noted by the prosecution, the petitioner is not guilty of any of the contravention Nos. 1 to 4 mentioned in page 3 of the order of the Joint Collector. It may be pertinent to note the contraventions referred to by the concerned Joint Collector and the said contraventions 1 to 5 are as under:

1.	Diversion of PDS Rice and Sugar other Than house hold supply cards	APSC (RDCS) Order, 1973	Clause - 4
2.	Selling Scheduled Commodities not Supplied through the Government Without permission	APSC (RDCS) Order, 1973	Proviso-3 of Cl.3(1)
3.	Not adhering to direction of Collector/RDO	Con.11 of Authorization	Cl.16(4)
4.	Selling, Distribution or supply Kerosene under PDS to any person Other than the person to whom the Supplier on meant for	The K.Oil restriction on use on fixation of ceiling price Order, 1993	Cl.2(2)
5.	Improper maintenance of registers Non completion of accounts on the Day etc.,	APSRDCS (L&D) Order, 1982 A.P. Petroleum Products.	Con.3(vi) License

24. It is needless to say that contravention No. 5 is only with regard to the improper Maintenance of registers and the other serious contraventions pointed out by the Joint Collector 1, 2, 3 and 4 had been specifically negatived by the learned Principle Sessions Judge in the Criminal Appeal referred to supra. Though these proceedings relating to cancellation and the proceedings under Section 6-A of the Essential Commodities Act , 1955 stand slightly

on different footing as far as several factual findings are concerned there may be over lap and there cannot be any two opinions regarding these aspects. Hence, in the light of the nature of the order and the charges referred to by the Primary authority as confirmed by the appellant authority and the revisional authority and in the light of the nature of the findings recorded by the concerned Joint collector who is incidentally the appellate authority and the findings recorded in the criminal appeal by the learned Principle Sessions Judge, East Godavari District, this court is of the considered opinion that inasmuch as the left over charge being not serious, the cancellation of authorization affected as against the Writ Petitioner, would require re-consideration in the light of the view expressed by the learned Principal Sessions Judge, East Godavari District in the Criminal Appeal specified above.

25. Accordingly, the orders impugned in the present Writ Petition are hereby quashed and the matter is remitted to the primary authority to the concerned Revenue Divisional Officer, to take into consideration the observations made by the learned Principal Sessions Judge, in Criminal Appeal No. 141 of 2002 and make appropriate orders in accordance with law, if necessary by giving due opportunity to the Writ Petitioner and after hearing the petitioner also in this regard, within a period of four weeks from the date of receipt of a copy of this order.

26. Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.

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P.S. NARAYANA,

J

DATE: 27 --12--2007.

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